

December 4, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

700 Central Building
810 Third Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON APPEAL FROM DIRECTOR'S
ADMINISTRATIVE VARIANCE DECISION.

SUBJECT: Department of Development and Environmental Services File No. L95VA035

JEFFREY & LESLIE SUENAGA
Appeal from Variance Decision

Location: Southeast corner of SE Preston Way and 289th Place SE (29007 SE
Preston Way, Issaquah); Parcel No. 302407-9108

Owner: Jeffrey & Leslie Suenaga
1300 Harrington Avenue SE
Renton, WA 98058

Appellant: Jeffrey & Leslie Suenaga

SUMMARY OF DECISIONS:

Department's Decision:	Approve variance, with conditions
Examiner's Decision:	Approve variance, with conditions

PRELIMINARY MATTERS:

Department's Report and Decision issued:	September 26, 1996
Notice of appeal received by Examiner:	October 23, 1996
Statement of appeal received by Examiner:	October 23, 1996

EXAMINER PROCEEDINGS:

Hearing Opened:	November 26, 1996, 1:35 p.m.
Hearing Closed:	November 26, 1996, 2:10 p.m.

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

➤ Variances -- minimum relief requirement

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On May 25, 1995, Leslie & Jeffrey Suenaga applied for a building permit to construct a 2,240-square-foot two-story residence with an attached two-car garage on a .91-acre parcel located at 29007 SE Preston Way. The southern portion of the parcel is crossed by a seasonal tributary to Issaquah Creek, which has been identified by area residents as supporting salmonid fingerlings. Accordingly, the stream has been classified by DDES as Class 2 with salmonids, requiring a 100-foot protective buffer plus an additional 15-foot building setback pursuant to King County Sensitive Areas regulations.
2. A variance application was submitted by the Suenagas on October 30, 1995. The request seeks the reduction of the stream buffer required under KCC 21A.24.360 from 100 feet to 50 feet from the Ordinary High Water Mark. When combined with the 15-foot building setback, the variance would allow the construction of the Suenaga residence at a distance of 65 feet from the Ordinary High Water Mark.
3. Based on the written application record, a report and decision was issued on September 26, 1996, by Mark Carey, acting on behalf of the Department of Development and Environmental Services (DDES) Director. Mr. Carey's decision granted the variance subject to conditions. He found that the application as submitted met all of the requirements for issuance of a variance under KCC 21A.44.030, except the mandate that the variance shall be "the minimum necessary to grant relief to the applicant". Following a recommendation made by Laura Casey, Staff Senior Ecologist, the September 26, 1996 DDES decision requires the building envelope for the Suenaga's house to be rotated so that the northern frontage of the house is parallel with SE Preston Way and further removed from the creek. The decision also requires the applicant to perform enhancement in the eastern portion of the buffer in an area approximately equal to the stream setback to be altered by the construction of the house and driveway. The Suenagas have filed a timely appeal of the conditions of variance approval, seeking to expand the building setback area further into the buffer so that more backyard space might be created.
4. The record amply supports the DDES Director's conclusion that the proposed Suenaga residence cannot be constructed without granting a variance from stream setback requirements. If the full 100-foot setback were applied, the buildable portion of the property would be limited to the northwest corner of the lot. As shown by the site plan, however, this area will be almost fully occupied by the proposed septic drainfield, which is required both to maintain a 100-foot setback from the creek and, as well, a 30-foot setback from the road ditch along the south side of SE Preston Way. A further special circumstance which affects the property is the arc of the streambed. The stream enters the property on its west side along a nearly east-west path, then curves north along the eastern property line in a manner which increases the portion of the lot subject to buffer requirements.
5. The appellants do not contest the Staff's contention that the extent of the stream buffer intrusion can be reduced if the proposed building footprint is slightly rotated to the north. Moreover, they have submitted no evidence suggesting that the creek is not subject to salmonid use. Rather, they have chosen to emphasize the fact that other residential properties in the neighborhood, all of which appear to have been constructed before the imposition in 1990 of Sensitive Area requirements, have large back yards which leave little or no stream buffer. While this fact demonstrates that without a variance the appellants' property may be deprived of rights and privileges enjoyed by other properties in the vicinity, it does not satisfy the requirement that the variance be limited to the minimum buffer intrusion necessary to grant relief to the appellants.

CONCLUSIONS:

1. Review on appeal by the Hearing Examiner of a decision of the DDES Director with respect to a variance application is governed by KCC 21A.42.090.D and -E. These provisions require the Examiner to hold an appeal hearing and authorize modification or reversal of the Director's decision only if it is found to have been clearly erroneous.
2. The Director's variance decision is supported by the evidence of record. The appellants have offered no testimony showing that any of the critical elements of the Director's decision are incorrect. Therefore, the appellants have failed to sustain their burden of proof to demonstrate that the Director's decision was clearly erroneous. Accordingly, the decision of the Director is

entitled to be upheld on appeal.

DECISION:

The appeal is DENIED. The variance decision of the Director dated September 26, 1996, is affirmed, including the conditions of variance approval contained therein.

ORDERED this 4th day of December, 1996.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 4th day of December, 1996, to the following parties and interested persons:

Susan Fowler
29008 SE Preston Way
Issaquah, WA 98027

Leslie & Jeff Suenaga
1300 Harrington Avenue SE
Renton, WA 98058

Laura Casey, DDES/Land Use Services Division
Trudy Hintz, DDES/Land Use Services Division
Lisa Pringle, DDES/Land Use Services Division
Sherie Sabour, DDES/Land Use Services Division

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding zoning variance decisions. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE NOVEMBER 26, 1996 PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L95VA035 - SUENAGA:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Sherie Sabour, Laura Casey and Jeffrey Suenaga.

The following exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services File No. L95VA035
Exhibit No. 2	Memo dated October 23, 1996 from Laura Casey to Sherie Sabour

SLS:gb
\\variance\l95\l95va035.rpt